

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mims, Myrtle Lee

Examiner: Corbin, Arthur L.

Serial No.: 10/720,508

Group Art Unit: 1761

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Docket No.: MIMS-3698

Title: **SWEET POTATO COMPOSITION AND METHOD OF MAKING THEREOF**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SPECIES ELECTION AND PRELIMINARY AMENDMENT

Sir:

This paper is being filed in response to the Restriction mailed September 25, 2006.

Reconsideration and allowance are respectfully requested in view of the Amendments and Remarks below.

RESPONSE TO RESTRICTION WITH SPECIES ELECTION

In response to the Restriction Requirement dated September 25, 2002, Applicant hereby provisionally elects Group III, claims 12-20, drawn to a kit including a sweet potato composition in a receptacle, classified in class 426, subclass 637. This election is made with traverse, and Applicant hereby reserves the right to file a divisional application in connection with unelected claims 1-8, drawn to a method of making a sweet potato composition, classified in class 426, subclass 489 and claims 9-11, drawn to a kit including a sweet potato composition in a bell pepper, classified in class 426, subclass 615.

It is respectfully submitted that the search and examination of the inventions/species of the entire application could be made without serious burden. See MPEP §803, in which it is stated that “if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits” (emphasis added). It is respectfully submitted that this policy should apply to the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

The Examiner restricted method claims 1-8 and claims 9-11 or 12-20, stating “In the instant case the product as claimed can be made by another and materially different process, e.g. a process wherein the sweet potato starting material is neither **formed nor strained**” (emphasis added). The Restriction Requirement, page 2, paragraph 3, last sentence.

Applicant respectfully traverses the Examiner’s restriction of claims 1-8 and 12-20 because the Examiner has not supported his statement that the product of claims 1-8 and 12-20 “can be made by another materially different process.” Applicant respectfully submits the Examiner’s statement that “the product as claimed can be made by another and materially different process, e.g. a

process wherein the sweet potato starting material is neither **formed nor strained** (emphasis added)” assumes that the product as claimed in claims 1 and 12 can be made by another materially different process without documenting that the alleged **another and materially different process** produces a product that has a mouthfeel in a range from about 5.1 to about 9.0 as in Applicant’s claims 1-8 and claims 12-20.

The MPEP states the burden shifts to the examiner to document a viable alternative process or product, if applicant convincingly traverses the requirement, or withdraw the requirement. See the MPEP, 806.05(f). The Examiner has not met his burden to document a viable alternative process or product that produces a product having a mouthfeel in a range from about 5.1 to about 9.0 as in Applicant’s claims 1-8 and claims 12-20.

Therefore the Examiner should withdraw the restriction requirement of claims 12-20 and include them in the examination of the claims in invention I.

PRELIMINARY AMENDMENT

Kindly enter this amendment prior to initial examination.